S.B.CIVIL WRIT PETITION NO.3270/2004
(Shyam Sharma Vs. The Addl. District Judge No.3, Jodhpur & Ors.)

Date of Order : 09th August, 2004.

HON'BLE SHRI N.P.GUPTA, J.

Mr.M.K.Trivedi for the petitioner.

Heard learned counsel for the petitioner.

It is not in dispute that the determination of rent under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 was made on 23.9.94, and vide order dt. 7.11.94, the learned trial Court extended the time, for depositing the determined amount, up to 23.12.94, meanwhile on 22.12.94, the amount was paid to the learned counsel for the plaintiff.

The question is that a sum of Rs.200/- was deposited by the defendant in the Court on 27.10.94, which according to the learned counsel, was a delayed deposit, while the learned trial Court has found that, as a matter of fact, if the payment made is taken into account, the rent upto February 97 stood deposited, and on that basis, the learned trial Court dismissed the application for striking out the defence.

It is, on this very date, that the defendant filed an application under Section 5 of the Limitation Act, contending, and mentioning therein, that if the Court finds that there has been delay in depositing the rent, for the month of September, which has been deposited on 27th October, 94, the delay may be condoned. The learned Lower Appellate Court, in appeal vide its order, Annexure-12, has considered the application filed by the defendant for condonation of delay. While according to the learned counsel for the petitioner, the petitioner had no opportunity to controvert the said application. However, from perusal of the impugned order, it transpires that the learned Lower Appellate Court has found that the determination was made on 23.9.94, which included rent upto August 94, and monthly rent is Rs.100/-, while the defendant had deposited Rs.200/- on 27.10.94. Learned Lower Appellate Court has also found that the factum of payments/deposits is not in dispute, and the learned Lower Appellate Court has considered the fact, that the payment-schedule does show that the defendant has always been depositing rent in advance. In such circumstances, if the defendant has deposited the rent,

for the month of September 94 with a delay of 12 days, or has deposited the rent, for the month of November 94 with a delay of 7 days, and has filed an application for condonation of delay, on the technical ground, the defence need not be struck off.

Learned counsel relied upon the judgment of Hon'ble the Supreme Court in Nasiruddin & Ors. Vs. Sita Ram Agarwal, reported in 2003(1) WLC (SC) Civil 293, wherein the Hon'ble Supreme Court had held that the Court cannot extend the time, nor can condone the default beyond the prescribed limit, and has also held that the provisions of Section 5 of the Limitation Act would not apply.

I have considered the submissions, and have gone through the judgment.

In Nasiruddin's case, the Hon'ble Supreme Court had considered the provisions of Sections 13(3), 13(4), and 13(5) of the Act, and all that was held, was that the provisions of Section 5 of the Limitation Act must be construed having regard to the provisions of Section 3 of the Limitation Act, and that, since the Court can condone the default only when the statute confers the powers on the Court, and not otherwise, and therefore, the provisions of Section 5 of the Limitation Act have no application to the instant case. It is significant to note that in para 46, the Hon'ble Supreme Court took into consideration the powers of the Court itself to extend the time within the limits permissible under Section 13(4). The case before the Hon'ble Supreme Court was one, regarding failure to deposit the amount determined under Section 13(3), while the case before me is about the failure to deposit the amount of subsequent months, month by month. Under Section 13(4), the tenant is entitled to deposit the amount within 15 days of the following month, for which, the rent is to be paid, and at the same time, in the very sub-section (4), the Court has been conferred power to further extend the time, not exceeding 15 days. In that view of the matter, the power of the Court to extend the time, to the extent of 15 days, permissible under Section 13(4), is not taken away by the judgment of Hon'ble the Supreme Court in Nasiruddin's case on the interpretation of non-applicability of Section 5 of the Limitation Act.

So far the facts of the present case are concerned, true it is, that the application for condonation of delay was filed by the defendant after the order was passed by the trial Court, and true it also is that the petitioner did not get any opportunity to controvert the allegations made in the application, but then, the fact does remain that the Hon'ble Supreme Court has consistently been

taking the view to adopt a liberal attitude in the matter of striking off the defence.

In that view of the matter, when the learned Lower Appellate Court has condoned the delay, I do not find any sufficient ground to interfere in my writ jurisdiction with such condonation, more particularly when in view of Section 13(4), the power is conferred to the Court to condone the delay within 15 days, and the delay condoned in the present case is within the aforesaid permissible limits.

The writ petition is, therefore, dismissed summarily.

(N.P.GUPTA), J.

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